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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/823,453	04/13/2004	Joseph F. Bringley	87834F-P	6123
7590 Pamela R. Crocker Patent Legal Staff Eastman Kodak Company 343 State Street Rochester, NY 14650-2201		EXAMINER HRUSKOCI, PETER A		
		ART UNIT 1724		
PAPER NUMBER				
SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE		
3 MONTHS	12/28/2006	PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 10/823,453	Applicant(s) BRINGLEY ET AL.	
	Examiner Peter A. Hruskoci	Art Unit 1724	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 4/13 & 11/18/04, 12/19/05 & 7/3 & 7/31/06.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-52 is/are pending in the application.
- 4a) Of the above claim(s) 37-52 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-23 and 26-36 is/are rejected.
- 7) ☒ Claim(s) 24 and 25 is/are objected to.
- 8) ☒ Claim(s) 1-52 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____ |

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Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-36, drawn to a packaging material, classified in class 426, subclass 133.
- II. Claims 37-52, drawn to a packaging assembly, classified in class 206, subclass 204.

The inventions are distinct, each from the other because of the following reasons: The packaging material of Group I does not require the structure of the packaging assembly of Group II including the recited absorbent material, tray, and thin film, respectively.

Because these inventions are independent or distinct for the reasons given above and have acquired a separate status in the art in view of their different classification and recognized divergent subject matter, restriction for examination purposes as indicated is proper.

During a telephone conversation with Frank Pincelli on 12/19/06 a provisional election was made without traverse to prosecute the invention of Group I, claims 1-36. Affirmation of this election must be made by applicant in replying to this Office action. Claims 37-52 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claims 8, 9, 15-19, and 27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claims 8 and 9 "such as" is vague and indefinite because it is unclear how this term further limits the claims. In claims 15-19 "the polymer" and in claim 27 "the article" lack clear antecedent basis.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 8-11, 14, 18, 33, and 36 are rejected under 35 U.S.C. 102(b) as being anticipated by Wilholt 5,573,800. It is submitted that Wilholt disclose (see col. 7 line 14 through col. 13 line 8) the packaging material recited in the instant claims. It is noted that the EDTA disclosed in Wilholt would appear to have the stability constant recited in claims 2, 10, and 11.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wilholt 5,573,800. The claim differs from Wilholt by reciting that the sequestering agent comprises a specific percent by weight of the polymer. It is submitted that the specific weight percent of chelating or sequestering agent present in the polymeric of Wilholt is considered patentably

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indistinguishable from the percent by weight recited in the instant claims. It would have been obvious to one skilled in the art to modify the packaging material of Wilholt by utilizing the recited percent by weight of sequestering agent, to aid in inhibiting growth of microorganisms in the foodstuff. The specific percent by weight utilized would have been an obvious matter of process optimization to one skilled in the art, depending on the specific foodstuff treated and results desired, absent a sufficient showing of unexpected results.

Claims 5-7, 15-17, and 27-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wilholt 5,573,800 as above, and further in view of Teumac et al. 6,465,065. The claims differ from Wilholt as applied above by reciting that the packaging material includes a specific barrier layer to allow liquid to pass through an inner layer having said sequestering agent. Teumac disclose (see col. 7 line 12 through col. 11 line 36) that it is known in the art to utilize a plurality of polymer film layers in the vicinity of a water bearing foodstuff, to permit water to permeate into a polymer layer for activating a metal chelate oxygen scavenging agent. It would have been obvious to one skilled in the art to modify the packaging material of Wilholt by including the recited barrier layer in view of the teaching of Teumac et al., to aid in permitting water to contact the sequestering agent. The use of a second outer or barrier layer, and the specific water permeability of the polymer, would have been an obvious matter of process optimization to one skilled in the art, depending on the specific foodstuff treated and results desired, absent a sufficient showing of unexpected results.

Claims 12, 13, 20-23, and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wilholt in view of Cook. The claims differ from Wilholt above, by reciting that the sequestering agent comprises specific derivatized nanoparticles having an attached metal-ion

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sequestrant. Cook disclose (see col. 10 line 5 line 41 through col. 15 line 45) that it is known in the art to utilize chelating agents anchored to nanoparticles to form protective coating for surfaces. It would have been obvious to one skilled in the art to modify Wilholt by including the recited derivatized nanoparticles in view of the teachings of Cook, to aid in forming a protective surface for the packaging material. The specific particle size, stability constant, and surface area utilized, would have been an obvious matter of process optimization to one skilled in the art, depending on the specific foodstuff treated and results desired, absent a sufficient showing of unexpected results.

Claims 34 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wilholt view of Ruzek 5,985,342. The claims differ from Wilholt as applied above, by reciting that the packaging material is formed as a specific rigid structure for holding the foodstuff. Ruzek disclose (see col. 5 line 38 through col. 10 line 56) that it is known in the art to utilize a packaging system including sequestering agents, wrapping film, and a rigid plastic tray, to aid in treating and packaging meat. It would have been obvious to one skilled in the art to modify Wilholt by including the recited structure in view of the teachings of Cook, to aid in treating and holding the foodstuff.

Claims 24 and 25 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. It is noted that copies of the Foreign Patents and Other Art, did not appear to be included in the IDS dated 12/19/06.


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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter A. Hruskoci whose telephone number is (571) 272-1160.

The examiner can normally be reached on Monday through Friday from 6:30AM-4:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Duane Smith can be reached on (571) 272-1166. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Peter A. Hruskoci
Primary Examiner
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12/22/06